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Although Oracle believes the definition is clear, in effort to meet and confer, it clarifies that "including the time period from the date of determination" does not include the time prior to the date of determination.

As for your objection to the phrase "participated in" and the word "role" in Interrogatory No. 1, the words after the word "whether" indicate the different ways someone could "participate in" and "role" is one of the words following the word "whether."

OFCCP also objected to interrogatories claiming that "nature of the facts" was ambiguous. Oracle believes that what is sought is clear from the context of the interrogatories.

During our meet and confer discussions, you objected that Oracle did not identify the type of "knowledge" that it was seeking. As mentioned in the telephonic meet and confer process, the interrogatories identify the knowledge sought, e.g., knowledge of the facts alleged in Paragraph 7 of the amended complaint. See Interrogatory No. 3.

OFCCP has raised the concern that it may be that persons identified don't have first hand knowledge or might be mistaken in their knowledge. Therefore, OFCCP has suggested that it might have to interview people. As for the concern that people may not have first hand knowledge or might be mistaken, the interrogatories request that OFCCP provide information concerning those persons that OFCCP understands or believes have knowledge of the facts, whether that knowledge is first hand or not. It may be that people are mistaken as to their knowledge. If so and OFCCP knows this, then OFCCP would not identify the person that OFCCP believes mistakenly knows facts.

As for interviewing people, interrogatories require OFCCP to make a "reasonable inquiry." See *Uribe v. McKesson*, 2010 WL 892093, at *2-3 (E.D. Cal. Mar. 9, 2010); Fed. R. Civ. P. 26(g)(1). Oracle acknowledges that, if necessary, those who work for OFCCP and other government agencies who OFCCP believes may have knowledge might need to be interviewed. But Oracle does not believe that it is a reasonable position to take that OFCCP has to interview Oracle employees to respond to these interrogatories.

F. OFCCP should withdraw General Objection No. 6 as OFCCP's proportionality objections are invalid

During meet and confer, OFCCP claimed that Oracle's interrogatories were not proportional to the needs of the case. OFCCP claimed that the questions required OFCCP to search every Solicitor of Labor office including the regional office, the area offices, and the national office in order to respond.

That may be. However, "[t]he discovery process relies upon the good faith and professional obligations of counsel to reasonably and diligently search for and produce" responsive information. *Reinsdorf v. Skechers U.S.A., Inc.*, 296 F.R.D. 604, 615 (C.D. Cal. 2013). Asking these other offices does not appear



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to be unreasonable, and OFCCP has been unable to explain why such an inquiry is unreasonable or disproportionate. This is all the more true as OFCCP could not provide assurances that various offices did not have information relevant to the allegations of the Amended Complaint and to the interrogatories.

G. OFCCP should withdraw General Objection No. 7 and in any event, Oracle is entitled to discovery of OFCCP's statistical analysis

During our meet and confer discussions, OFCCP argued that the statistics cited in the amended complaint have been "mooted." First, it makes no sense for OFCCP to argue that because it plans to create a *future* statistical analysis that OFCCP's *past* statistical analysis is no longer relevant. This is particularly true when that past analysis was cited in the NOV, the amended complaint and incorporated into the interrogatory responses as a basis for OFCCP's allegations of discrimination. Second, it makes no sense for OFCCP to argue that because the time has been *expanded* that OFCCP's statistical analysis—which is within the relevant time frame—is no longer relevant. The statistical analysis would be relevant for the time frame that it did cover. Third, and most importantly, OFCCP is framing the issue incorrectly. Oracle is entitled to the underlying statistical analysis for the purpose of anticipating that OFCCP would use the analysis to support its claims. However, Oracle is also entitled to the analysis on separate grounds in order to defend OFCCP's claims and for impeachment purposes. See Fed. R. Civ. P. 26. Thus, even if OFCCP never used its past statistical analysis, Oracle would want the relevant analysis to evaluate it for defense and impeachment purposes. Oracle cannot make that assessment because OFCCP has completely and utterly failed to produce the statistical analysis.

II. RESPONSES TO INTERROGATORIES

A. OFCCP has agreed to identify documents referenced in the interrogatory responses by bates stamp number

OFCCP has agreed to identify documents by bates stamp number. But Oracle would further note, as mentioned in its letter of July 5, the responses are additionally deficient because they do not identify all of the evidence or documents that is responsive to the interrogatories.

B. OFCCP's persistent objections to clear words and phrases are not well taken

During our meet and confer discussion regarding interrogatories, you raised the issue of what simple word and phrases meant, as you did with our meet and confer discussions regarding the requests for documents.



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C. Interrogatories that request contact information are proper

During meet and confer, OFCCP asked what type of information it wanted in "contact information." Oracle will adopt OFCCP's use of "contact information" in its RFP No. 83 as including "full name, home address, home phone number, mobile phone number, and home/personal email address."

OFCCP contends that because Oracle is asserting a privacy objection, OFCCP is asserting a privacy objection. However, OFCCP has provided no authority as to why contact information should not be disclosed.

D. Oracle's interrogatories do not contain multiple subparts but in any event, Oracle will seek leave for additional interrogatories due to OFCCP's deficient discovery responses

During our meet and confer discussions, OFCCP objected to interrogatories as containing multiple subparts. On that basis, OFCCP did not respond to Interrogatories 22-25 because you contend that Oracle exceeded the limit for interrogatories. As I said, Oracle disagrees with that characterization. None of the interrogatories have subparts.

You asked for authority and Oracle responds as follows: Fed. R. Civ. Proc. 33 advisory committee note to 1993 amendment ("[A] question asking about communications of a particular type should be treated as a single interrogatory even though it requests that the time, place, persons present, and contents be stated separately for each such communication."); *Trevino v. ACB Am., Inc.*, 232 F.R.D. 612, 614 (N.D. Cal. 2006) ("courts generally agree that 'interrogatory subparts are to be counted as one interrogatory ... if they are logically or factually subsumed within and necessarily related to the primary question'"); *Gilmore v. Lockard*, No. 1:12-CV-00925 LJO, 2015 WL 5173170, at *8 (E.D. Cal. Sept. 3, 2015) (granting motion to compel because "Defendants correctly argue that Interrogatory subparts are to be counted as one interrogatory for the purpose of this rule if they are logically or factually subsumed within and necessarily related to the primary question."); *Safeco of Am. v. Rawstron*, 181 F.R.D. 441, 444 (C.D. Cal. 1998) (if subparts are "subsumed within" or "necessarily related to" the "primary question," they should be counted as one interrogatory rather than as multiple interrogatories); *Dang v. Cross*, No. CV 00 13001 GAF(RZX), 2002 WL 432197, at *3 (C.D. Cal. Mar. 18, 2002) (interrogatories which include subparts are treated as one interrogatory if the "subparts ... are logically or factually subsumed within and necessarily related to the primary question"); *Ginn v. Gemini, Inc.*, 137 F.R.D. 320, 322 (D. Nev. 1991) (interrogatory subparts are to be counted as part of only one interrogatory if they are logically or factually subsumed within and necessarily related to the primary question); *Loop AI Labs Inc. v. Gatti*, No. 15CV00798 HSGDMR, 2016 WL 9132846, at *2 (N.D. Cal. May 6, 2016) (same); *Kendall v. GES Exposition Servs., Inc.*, 174 F.R.D. 684, 685 (D. Nev. 1997) (citing *Ginn* approvingly and holding that subparts that are "logically or factually subsumed within and necessarily related to the primary question" should not be counted as separate interrogatories); *Sherrill v. Holder*, No. CV-12-00489-TUC-CKJ, 2014 WL 12650705, at *2 (D. Ariz. Jan.



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29, 2014) ("interrogatory subparts that are logically or factually subsumed within and necessarily related to the primary question are to be counted as one interrogatory"); *U.S. ex rel. Pogue v. Diabetes Treatment Centers of Am., Inc.*, 235 F.R.D. 521, 527 (D.D.C. 2006) (noting that case law supports the "common sense conclusion" that an interrogatory may contain multiple parts that "are logically or factually subsumed within and necessarily related to the primary question"); *Krawczyk v. City of Dallas*, No. CIV.A. 3:03-CV-0584D, 2004 WL 614842, at *2 (N.D. Tex. Feb. 27, 2004) ("If the first question can be answered fully and completely without answering the second question, then the second question is totally independent of the first and not 'factually subsumed within and necessarily related to the primary question.'"); *Clark v. Burlington N. R.R.*, 112 F.R.D. 117, 118 (N.D. Miss. 1986) (noting that subparts serve to narrow the scope of an interrogatory by clarifying for the responding party the precise descriptive details desired by the requesting party and holding that an interrogatory should be counted as a single question even if it calls for several separate bits of information where there is a direct relationship between the various bits of information called for); *State Farm Mut. Auto. Ins. Co. v. Pain & Injury Rehab. Clinic, Inc.*, No. CIV.A. 07-CV-15129, 2008 WL 2605206, at *2 (E.D. Mich. June 30, 2008) (subparts that are subsumed within the primary questions are treated as one interrogatory); *DLJ Mortg. Capital, Inc. v. Lemon Creek Ranch, LLC*, No. CV 12-55-BU-DLC, 2013 WL 12134036, at *3 (D. Mont. Sept. 3, 2013) (where interrogatory subparts are "logically and factually connected," interrogatory should be regarded as a single interrogatory); *Estate of Marship v. United States*, 232 F.R.D. 552, 555-56 (M.D. La. 2005), *aff'd*, (M.D. La. Jan. 13, 2006) (finding subparts to be secondary to the primary interrogatory and therefore one interrogatory because the subparts would not make sense without the primary question as they requested the identity of the persons referred to in the primary question, the time of any comments referred to in the primary question, and the substance of any comments in the primary question); *Myers v. U.S. Paint Co., Div. of Grow Grp.*, 116 F.R.D. 165, 165-66 (D. Mass. 1987) (where interrogatory subparts are a logical extension of the basic interrogatory and seek to obtain specified additional information with respect to the basic interrogatory, a party does not violate a limit on the number of interrogatories even if the total with subparts exceeds the limit).

Furthermore, to the extent that any of the interrogatories include multiple subparts, Oracle intends to seek leave to ask additional interrogatories. See Fed. R. Civ. P. 33(a)(1). Request for additional interrogatories is particularly appropriate here in light of the fact that OFCCP's existing responses to interrogatories and its document production are deficient, and OFCCP has not produced a single 30(b)(6) witness.

E. OFCCP will go back and state responses fully instead of incorporating previous responses

During our meet and confer discussions, I noted that OFCCP's responses were unclear when it incorporated responses to interrogatories, which in turn incorporated other interrogatories. You agreed that you would go back and amend OFCCP's responses.



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F. Quotation in Interrogatories 12 and 17

Oracle clarifies that the word "roles" in Interrogatory 12 which is quoting the amended complaint should be "job functions." Oracle clarifies that Interrogatory 17 should include the entire quote without ellipses.

G. Deliberative Process Privilege

During our meet and confer discussions, you said that OFCCP will be relying on *EEOC v. FAPS, Inc.*, 2012 WL 1656738, 2012 U.S. Dist. LEXIS 65591, *13-25 (D.N.J. May 10, 2012), which I cited in my July 5 letter. This citation recounts both parties' arguments as to whether statistics are discoverable, and cites to the court's declaration that the deliberative process privilege may apply "if the document (1) was generated before the adoption of an agency's policy or decision, or is pre-decisional, and if the document (2) is deliberative in nature, containing opinions, recommendations, or advice about agency policies." *Id.* (alterations and internal quotation marks omitted). Oracle maintains OFCCP has adopted the statistical analysis in a final agency decision and has incorporated that statistical analysis in its response to the interrogatories by incorporating the responses of the Amended Complaint. Therefore, the request for information in the statistical analysis is timely and proper. See also *E.E.O.C. v. Fina Oil & Chem. Co.*, 145 F.R.D. 74, 76 (E.D. Tex. 1992).

H. Interrogatories 21 and 22 are sound

During the meet and confer discussions, OFCCP contended that Oracle should not refer to both paragraph 12 and 13 in a single interrogatory. However, the topic is singular: OFCCP's assertion that Oracle refused to produce documents to it. That OFCCP decided to break up the allegations into two paragraphs does not render Oracle's interrogatories improper or even separate subparts. If that were the rule, every plaintiff would break up allegations in as many paragraphs as possible in order to force defendants to waste an interrogatory asking about each paragraph.

Please let me know no later than August 4, 2017, whether OFCCP will provide amended answers to the interrogatories and in what respects the interrogatory responses will be amended.

Very truly yours,

A handwritten signature in cursive script that reads "Warrington Parker / JDP".

Warrington Parker

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August 4, 2017

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Re: *OFCCP v. Oracle, Inc.*, Case No. 2017-OFC-00006
Meet and Confer Letter for Oracle's Amended Interrogatories

Dear Mr. Warrington:

This meet and confer letter is written in response to your August 2, 2017, letter sent at 11:00 p.m. Your letter has many inaccuracies and fails to adequately address the issues we discussed. Moreover, it questions OFCCP's conduct. To move this process forward, this letter will focus upon the substantive issues raised by Oracle's August 2, 2017, letter and the positions that Oracle took during the meet and confer process as opposed to the manner that Oracle took to express them.

1. Some of the positions that Oracle takes in its latest meet and confer letter are contrary to its previous meet and confer positions.
 - A. Oracle reneges on its position whether OFCCP has to identify all facts and information in response to interrogatories.

Oracle continues to renege on its meet and confer agreements by again demanding that OFCCP identify all information it knows in response to Oracle's interrogatories. OFCCP's interrogatory responses repeatedly objected to Oracle's demand to "[s]tate all facts." Oracle's July 5, 2017, meet and confer correspondence stated over 20 times that "With regard to the 'all facts' objection, Oracle is willing to compromise and define 'all facts' to mean all material facts." Oracle then flip flops on this letter in its August 2, 2017, letter and requires OFCCP to produce all information in response to interrogatories when it stated: "the responses are additionally deficient because they do not identify all of the evidence or documents that is responsive to the interrogatories." Oracle's new demand that OFCCP identify all evidence, minor or material, is contrary to its previous compromise statement and constitutes a reversion back to its "[s]tate all facts" position. Contrary to Oracle's assertion, OFCCP is not required to state all facts or evidence for each claim. *Safeco of Am. v. Rawstron*, 181 F.R.D. 441, 447 (C.D. Cal. 1998) (Court sustained overly broad and unduly burdensome objections because interrogatories sought "all facts."); *see also Williams v. Sprint/United Mgmt. Co.*, 235 F.R.D. 494, 502 (D. Kan. 2006)

("The Court finds that this interrogatory is overly broad to the extent it asks for "every fact" that supports an identified allegation or claim); *Thompson v. United Transp. Union*, 2000 WL 1375293, at *1 (D. Kan. 2000) ("Case law is well settled that interrogatories which seek "each and every fact" and which blanket the entire case are objectionable."). Furthermore, courts do not allow parties to renege on their discovery meet and confer compromises. *Soto v. Commercial Recovery Sys., Inc.*, 2011 WL 1298697, at *2 (N.D. Cal. 2011) ("Defendant should not be permitted to renege on a compromise of a discovery dispute."); *United States v. Butler*, 2000 WL 134697, at *2 (D. Kan. 2000) ("Defense counsel agreed to the [discovery] offer made by the government, and the court believes that he should abide by it.").

B. Oracle also reneged on its position that OFCCP can make general objections.

Oracle is also trying to renege on its previous commitment to allow OFCCP to make objections for every single interrogatory as general objections as opposed to repeating the objection in response to each and every single interrogatory. During the meet and confer teleconferences, Oracle was specially asked if it wanted OFCCP to list the same objection to each and every single interrogatory if it applied to all and it stated no. Oracle stated that OFCCP can list objections that apply to each interrogatory as general objections. In fact, Oracle acknowledges this position in its August 2, 2017, letter when it stated: "while Oracle has agreed that this general objection need not be repeated in response to each interrogatory, Oracle does insist that OFCCP remove its general objections and assert them as applicable to an interrogatory." Insisting that OFCCP now restate a general objection for each and every single interrogatory is reneging on its previous agreements and is frowned upon by the courts. *Soto v. Commercial Recovery Sys., Inc.*, 2011 WL 1298697, at *2 (N.D. Cal. 2011) ("Defendant should not be permitted to renege on a compromise of a discovery dispute."); *United States v. Butler*, 2000 WL 134697, at *2 (D. Kan. 2000) ("Defense counsel agreed to the [discovery] offer made by the government, and the court believes that he should abide by it."). As committed to during the meet and confer teleconferences, to the extent that OFCCP made a general objection that is not responsive to all interrogatories, it will only list it in the specific interrogatories that it is applicable.

2. Oracle continues to take inconsistent positions between its offensive and defensive meet and confer communications.

Oracle's August 2, 2017, letter is woefully incomplete when it failed to address the numerous inconsistencies between Oracle's offensive and defensive meet and confer positions that were identified during the interrogatory meet and confer teleconferences.

A. Oracle is inconsistent with requiring specificity for objections that OFCCP makes while inexplicably excusing the lack of specificity for its objections.

Throughout the meet and confer process, OFCCP identified that Oracle failed to provide the required specificity to support its objections. OFCCP identified this problem in its initial meet and confer letter dated March 27, 2017, in its very first meet and confer teleconference on May 18, 2017, and in subsequent meet and confer correspondence (e.g., May 23, 2017). In fact, OFCCP cited to the district court case law that Oracle used in its March 27, 2017, letters and to

additional circuit court case law¹ for Oracle's unsupported boilerplate objections.² Not only did Oracle make these boilerplate objections in its written discovery, it admitted during the meet and confer teleconferences that it still made these objections even though (1) it did not know if it had any responsive documents for many requests; (2) it stated it did not have any responsive documents for two requests; and / or (3) it did not know what the request was seeking for many requests. Additionally, in Oracle's May 24, 2017, response, it denied that these six objections were boilerplate and unsupported even though it used case law identifying these very objections as boilerplate.

However, Oracle takes a different stance when OFCCP makes the same objections to every single one of its requests. In its July 27, 2017, letter, at Point IV. and in its August 2, 2017, letter at Point I.E., Oracle requested that OFCCP amend its discovery responses to remove a series of objections made to each request because they were unsupported. Absent an agreement from Oracle to amend its responses to remove its boilerplate objections cited in footnote 2 of this letter to each request, OFCCP has no reason to give up its objections.

B. Oracle also takes inconsistent positions regarding OFCCP seeking clarity regarding OFCCP's vague and ambiguous interrogatories.

Oracle complains about the words or phrases that OFCCP sought clarification for even though OFCCP sought clarification for a significantly lesser number and some of the same terms that Oracle sought clarification. Oracle's disdain is belied by its actions during the previous meet and confer process when OFCCP was seeking documents. Oracle made vague and ambiguous objections to at least 150 words or phrases (OFCCP stopped counting at 150) and to such common words as: you; person; orally; present; support; each; sufficient to identify; communicating with; applications; current, former or prospective employee; change; increase; hire; previously employed; evaluating; interviews; records; decision; stating; supporting; persons with knowledge; personnel file; qualification; performance evaluation; standards used; analyses; results; assumptions; variables; etc. Oracle repeatedly found words that OFCCP used to be vague and ambiguous even though Oracle used these same terms (e.g., refuse, support, person, analyses, you, each, record, etc.) in its written discovery, briefs or correspondence. Moreover, Oracle's position is further undermined by its request that OFCCP identify documents by Bates stamp number because "it cannot be assumed that Oracle and OFCCP use the same nomenclature." Furthermore, the soundness of clarifying was repeatedly demonstrated when Oracle stated it needed to "think

¹ *Burlington Northern & Santa Fe Ry. Co. v. U.S. Dist. Court for Dist. of Mont.*, 408 F.3d 1142, 1149 (9th Cir. 2005) ("We hold that boilerplate objections or blanket refusals inserted into a response to a Rule 34 request for production of documents are insufficient to assert a privilege."); *McLeod, Alexander, Powel & Apffel, P.C v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. 1990) (objections that document requests are "overly broad, burdensome, oppressive, and irrelevant" are insufficient to meet objecting party's burden of explaining why discovery requests are objectionable).

² In response to *all* of OFCCP's RFPs, Oracle made the same six objections: "Oracle further objects to this request as overbroad in scope, uncertain as to time, . . . , unduly burdensome, oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case."

about it” or Oracle modified its definitions or created definitions for vague and ambiguous terms.

3. Oracle’s contention interrogatories are premature at this stage in the litigation.

The Court’s Order expanding the violation time period provides further support for OFCCP’s strong argument that the contention interrogatories are premature. The Court has allowed discovery on time periods two or three times longer than the period for which data was previously provided, using the January 2017 Amended Complaint filing date as the tentative cut-off date. The Order is in addition to the strong case law that OFCCP cited in its April 18, 2017, letter and in its interrogatory responses which are incorporated here. To date, Oracle has not provided countervailing case law to the case law that OFCCP provided. Instead, it claims that because OFCCP previously investigated Oracle, this investigation replaces discovery and thus these cases are distinguishable. However, Oracle provided no case law to support this tenuous theory. Oracle’s position is further undermined because it repeatedly refused to produce documents and information to OFCCP which both hindered OFCCP and prevented it from conducting a complete investigation.

4. OFCCP is not required to provide a privilege affidavit at the time it makes a governmental privileged objection.

OFCCP previously provided Oracle case law during the meet and confer process that it does not have to produce an affidavit from the agency head invoking the privileges at the time it makes a governmental privileged objection. OFCCP identified in its April 18, 2017, meet and confer letter that it can provide a formal invocation of the privileges *to the court* when those privileges are challenged in a motion to compel. See *Perez v. El Tequila, LLC*, 2014 WL 5341766, at *4 (N.D. Okla. 2014) (slip copy) (finding the privilege properly invoked where Plaintiff filed a declaration in response to a motion to compel); cf. *Kerr v. U.S. Dist. Court for N. Dist. of California*, 511 F.2d 192, 198 (9th Cir. 1975) aff’d, 426 U.S. 394 (1976) (finding error where no formal invocation of a government privilege was made “in the district court”). Furthermore, the *Kerr* Court relied on Supreme Court precedent wherein the Supreme Court found a document to be protected under a governmental privilege when the Air Force Agency head made a formal privilege claim through an affidavit after the district court had preliminarily ruled upon the matter. *U.S. v. Russell*, 345 U.S. 1, 11 (1953).

OFCCP’s cases trump Oracle’s cases because they are from higher level courts: the United States Supreme Court and the Ninth Circuit compared to Oracle’s district court cases. Furthermore, the United States Supreme Court’s decision in *Russell* to allow a governmental agency head to produce the affidavit to the district court demonstrates that an affidavit can be produced at that time.

Lastly, Oracle still has not provided any authority for its position that OFCCP’s invocation of governmental privileges are waived if it produces an affidavit from the agency head invoking the privileges to the Court in response to a motion to compel. OFCCP requested this authority

during the teleconferences and Oracle did not identify this issue either in its July 27, 2017, or August 2, 2017, letters nor did it provide any authority to support this position. The United States Supreme Court's decision in *Russell* to allow a governmental agency head to produce the affidavit to the district court demonstrates that it is not waived.

5. Oracle misstates OFCCP's position and misapplies the procedural rules governing interrogatories for General Objection No. 3.

OFCCP did not cite to procedural Rule 33 during the teleconferences and Oracle's representations to the contrary and its citation to Rule 33 case law are incorrect and inapplicable for this General Objection. Instead, OFCCP cited to the procedural regulation governing interrogatories in an OFCCP case at 41 C.F.R. § 60-30.9. This regulation plainly states: "Each interrogatory shall be answered separately and fully in writing under oath, **unless objected to.**" Emphasis added. Oracle provided no case law for this procedural regulation challenging OFCCP's position. Instead, Oracle used Rule 33 case law. Oracle's citation to Rule 33 case law is inappropriate because of its previously stated position on this matter on March 9, 2017:

Discovery in this matter is governed by the regulations at 41 C.F.R. Part 60-30 et seq. Contrary to OFCCP's objection, only in the absence of a specific provision on point do the Federal Rules of Civil Procedure apply. 41 C.F.R. Part 60-30.1; *OFCCP v. Mississippi Power Co.*, Case No. 1992-OFC-8 (ALJ, July 16, 1993), *rev'd on other grounds* (Ass't. Sec'y., July 19, 1995) . . . Here, 41 C.F.R. § 60-30.9 expressly provides for written discovery by means of interrogatories, but places no numerical limit on the number that may be propounded. Thus, Federal Rule of Civil Procedure 33, and the limits placed on interrogatories therein, do not apply.

Since 41 C.F.R. § 60-30.9 is directly on point in terms of the extent to which a party is required to answer an interrogatory, Rule 33 and its case law do not apply. Thus, pursuant to the governing regulation, OFCCP is not required to respond fully and separately to an interrogatory when objections are made.

6. Oracle misstates the record for General Objection No. 5 and OFCCP continues to maintain the objection because Oracle did not address all of its problematic words.

Oracle admitted during the teleconferences that it capitalized words in its definitions section and it did not always capitalize these same words in the remainder of the document. Oracle further admitted that when it subsequently used these words in a non-capitalized fashion, they did not always have the same meaning as the words that it capitalized. In fact, every one of Oracle's instructions suffered from this problem wherein Oracle did not properly

communicate its intended meaning for capitalized words that it gave a special meaning. For Oracle now to blame OFCCP for seeking clarification because of problems it created is in bad faith.

Moreover, Oracle's August 2, 2017, letter did not address all of the words that OFCCP found issue with and so this General Objection remains. For example, even though OFCCP identified that Oracle failed to capitalize "person" in all locations, Oracle only addressed person at interrogatory 19 when stating it should not be capitalized. However, Oracle failed to address whether person should be capitalized in its instructions for those repeated instances wherein it is not capitalized. Since the instructions applied to all interrogatories, OFCCP will retain this General Objection.

7. Oracle misstates the record for OFCCP's vague and ambiguous objections to include its objection to "participated in."

OFCCP identified during the teleconferences that Oracle, for most of OFCCP's vague and ambiguous objections, did not address them in its July 5, 2017, meet and confer letter. This was problematic for OFCCP's responses identified the multiple ways that these vague and ambiguous words and phrases could be interpreted. However, despite this attempt to achieve clarity, Oracle did not address most of them in this correspondence. To avoid Oracle changing definitions, OFCCP requested that Oracle define them in writing. Oracle agreed. However, Oracle failed to do so in its August 2, 2017, letter for most of the words and phrases addressed in these objections. This is another example of Oracle reneging on a meet and confer commitment.

Moreover, for one of the terms, "participated in," that the parties discussed at length during the teleconferences, Oracle did not address what the parties discussed and just restated what it stated in its July 5, 2017, letter that was unresponsive. Both in its interrogatory responses and during the teleconferences, OFCCP identified that the combination of "participated in" and "providing information" could include someone inputting data in a spreadsheet or providing information to someone who provided the information eventually to OFCCP, or to someone who photocopied documents. Oracle acknowledged during the teleconferences that this combination had that excessive reach and that it would even apply to messengers.

However, Oracle incorrectly claimed that OFCCP had already discounted this reach when it did not include messengers in its identification of 13 people from OFCCP none of which were messengers. OFCCP demonstrated how this was not true because Oracle included other ways a person could participate besides providing information. In response, Oracle stated that it would look at this definition to see if it could more narrowly tailor it.

Contrary to its commitment, Oracle's August 2, 2017, letter just reiterated what it stated in its July 5, 2017, letter that the words after the word "whether" defined the scope of "participated in" and Oracle ignored its prior admission that two of these words were "providing information" that had

an extensive reach. As such, the vague and ambiguous and thus relevancy problem remains for the interrogatories containing the "participated in" language. It is not relevant for OFCCP to provide the names and contact information for messengers, photocopiers, people who do data input, etc.

8. Contrary to Oracle's statements, Oracle's interrogatories do not "request that OFCCP provide information concerning those people that OFCCP understands or believes have knowledge of the facts" and OFCCP has already addressed its beliefs in its responses.

To rectify Oracle's poor interrogatory drafting, Oracle attempts to change the scope of its knowledge interrogatories from people who have knowledge to the people OFCCP understands or believes to have knowledge. For example, in interrogatory 7, Oracle seeks the identify of people who have knowledge: "Identify by name and last known contact information each PERSON with knowledge of the facts alleged in Paragraph 7 of the Amended Complaint, including the nature of the facts of which the PERSON identified has knowledge." Nowhere in this interrogatory does Oracle limit it to just the people OFCCP understands or believes to have knowledge. Furthermore, this interrogatory did not identify what type of knowledge that the person had that Oracle was seeking: personal, third-hand or hearsay, constructive, etc. Oracle attempts to fix these problems in response to OFCCP's objections by stating that it is seeking the personal knowledge that OFCCP believes or understands that a person has. This change constitutes additional interrogatories above the 25-interrogatory limit. Furthermore, OFCCP has already identified the groups it believes may have the personal knowledge that Oracle is seeking. OFCCP identified these groups as Oracle employees, supervisors and managers employed by Oracle during the review period; former employees, supervisors and managers of Oracle. Lastly, for Oracle to ask OFCCP to identify people who it simply believes has knowledge is objectionable on speculation grounds.

9. It is unreasonable for Oracle to expect OFCCP to go to every person in every OFCCP, Solicitor's, VETS or other DOL office across the country to determine if anyone has any information related to this case.³

Oracle admitted in its August 2, 2017, letter that its interrogatories are so broad to require OFCCP to seek information from every person in every office for different agencies across the country to respond. Oracle further admitted during the teleconferences that the likelihood of someone having this information was remote. Oracle justifies this extreme position on the basis that OFCCP could not provide an iron clad guarantee that someone in a group of thousands and thousands of employees and former employees that would have to be interviewed might not possibly have a kernel of information related to the Amended Complaint. To expect such a guarantee is unreasonable because the only way to provide it would be to actually interview everyone. Moreover, this demand constitutes a change from

³ Oracle identified in its July 27, 2017, meet and confer letter that it wanted OFCCP to acquire documents from VETS and other DOL offices.

Oracle's previous meet and confer RFP positions wherein Oracle did not expect OFCCP to search for documents from every single person in every single office that might possibly have documents "related to" the Amended Complaint.

OFCCP did demonstrate the unreasonableness and lack of proportionality by identifying how unduly burdensome and overly broad these interrogatories were by requiring OFCCP to undertake such a broad and all-encompassing search. Finally, this is another example of Oracle being inconsistent in terms of how it handles discovery. Despite it being in error, Oracle attempts to refute OFCCP's proportionality objection by claiming it was unsupported even though everyone one of Oracle's written proportionality objections were unsupported when it stated: "Oracle further objects to this request as overbroad in scope, uncertain as to time, . . . , unduly burdensome, oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case" in response to every single one of OFCCP's RFPs.

10. *OFCCP's pre-filing statistical analyses and their supporting data are not relevant and both are privileged.*⁴

OFCCP's prior statistical analyses and their underlying data are not relevant and are protected by the deliberate process privilege. OFCCP's prior statistical analyses are simply not relevant to this case because they will not be used to prove Oracle's discrimination violations. As Oracle well knows, the Court authorized discovery that will afford data on far more years of data than was provided by Oracle during the review. Thus, these prior analyses and their supporting data are no longer in play.

Furthermore, OFCCP's investigatory analysis and its underlying data are protected by the deliberate process privilege. Courts have repeatedly held that statistical analysis provided to a governmental decision maker as input for a decision regarding whether to file a complaint are protected by this privilege. *E.E.O.C. v. FAPS, Inc.*, 2012 WL 1656738, at *31 (D. N.J. 2012) ("Based on the above and EEOC's statement that '[t]he discovery at issue ... relates to documents [data, statistical analyses and reports] gathered, produced, and analyzed by EEOC personnel as part of the ... EEOC's decision regarding whether to file a Commissioner's Charge against any number of employers operating in Port Newark' [citation omitted], the Court finds that EEOC has 'demonstrate[d] that the subject materials meet ... [the] threshold requirements' for the deliberative process privilege."'). In making this finding, this court found that the data, statistical analyses and their reports met the two requirements of this privilege — they were both "pre-decisional" and "deliberative in nature." *Id.* This holding is applicable to the current case. OFCCP's statistical was pre-decisional in that it was performed prior to the issuance of the NOV and the filing of the Amended Complaint. It was also deliberative in nature because

⁴ OFCCP makes a distinction between the underlying facts such as those in the 2014 compensation snapshot and the data sets pulled from the facts used in the statistical analysis. The underlying facts are producible while the data sets are not relevant and are protected by the deliberate process privilege. *E.E.O.C. v. FAPS, Inc.*, 2012 WL 1656738, at *31 (D. N.J. May 10, 2012).

“[t]hese documents were gathered, reviewed, and analyzed by [OFCCP] personnel as part of [OFCCP]’s process of deciding whether to file a[n]” Amended Complaint and issue a NOV. *Id.*

11. *Oracle’s justification for continuing to seek contact information over objection because OFCCP did not cite to authority is incorrect and inconsistent.*

Oracle claims that OFCCP did not cite to authority to support its contact information objection when OFCCP did identify the authority and Oracle is again being inconsistent in its application of discovery requirements. When addressing Oracle’s interrogatories for contact information, OFCCP identified that Oracle refused to provide contact information because of a privacy objection under the California constitution. OFCCP further stated that it is challenging Oracle’s objections and making the same objections here to the extent that the Court sustains them. For all of the objections that Oracle claimed for contact information please see JR Riddell’s letter dated May 22, 2017. Furthermore, this is another example of Oracle being inconsistent in how it treats discovery obligations depending on whether it is seeking discovery or defending against it when it did not provide any support in its written responses for its proportional objections for every single document production request that OFCCP made.

12. *Oracle’s interrogatories contain subparts and Oracle’s case law just cites to the general rule and not to the specific situation that OFCCP’s case law addresses.*

Oracle apparently believes that it can make up for its lack of authority on the specific point at issue by drowning the reader in general case law about the subject. None of the parentheticals for the twenty plus cases Oracle cited addresses the specific situation at issue in Oracle’s interrogatories: whether asking for a person’s identity and contact information plus the knowledge that he possess is one interrogatory or two. In contrast, OFCCP provided concise authority directly on point: *Hasan v. Johnson*, 2012 WL 569370, at *4 (E.D. Cal. Feb. 21, 2012) (“For example, Interrogatories requesting (1) facts (information about a certain event), (2) persons (identify each person who knew), and (3) documents (identify documents in support) have three discrete subparts, with different themes. *See Superior Communications v. Earhugger, Inc.*, 257 F.R.D. 215, 218 (C.D. Cal. 2009).”).

Lastly, Oracle’s claim that it will seek to justify additional interrogatories on the basis that OFCCP did not provide a single Rule 30(b)(6) witness is belied by its own actions. To date, Oracle has refused to provide a single Rule 30(b)(6) witness. OFCCP will oppose any attempt by Oracle to seek more interrogatories because OFCCP has already responded to 113 of them.

13. *Oracle discussion of interrogatories 21 and 22 is incorrect and fails to address the two most important objections OFCCP made.*

OFCCP made two principal objections to Interrogatory 21. First, it contained five subparts because, Oracle was asking for different themes like the identity of the person, what the person

refused and the documents/communications that the person expressed this refusal.⁵ Again, none of the case law that Oracle provided addressed this specific situation, but instead just gave the general rule. In contrast, OFCCP's case law was directly on point: *Hasan v. Johnson*, 2012 WL 569370, at *4 (E.D. Cal. Feb. 21, 2012) ("For example, Interrogatories requesting (1) facts (information about a certain event), (2) persons (identify each person who knew), and (3) documents (identify documents in support) have three discrete subparts, with different themes. See *Superior Communications v. Earhugger, Inc.*, 257 F.R.D. 215, 218 (C.D. Cal. 2009).").

The second major objection that OFCCP had was that interrogatory 21 quoted the Amended Complaint as stating that OFCCP requested "various records" that Oracle "refused to produce" in both Paragraphs 12 and 13. This is not true because OFCCP only used the words "various records" in Paragraph 12, not 13. This is important because interrogatory 21 is seeking information for a single "allegation" in both paragraphs for "various records," when this language was only used in Paragraph 12. Thus, in Oracle's attempt to combine 88 interrogatories into 25, it misrepresented OFCCP's complaint language such that OFCCP cannot answer interrogatory 21 for Paragraph 13.

Oracle's comments for interrogatories 21 and 22 are incorrect because OFCCP did not make them. OFCCP never stated that Oracle should not refer to two different paragraphs in a single interrogatory. Instead, OFCCP raised a sub-part objection and used as an example when a party requests another party to identify the basis for each request for admission that it does not provide an unqualified admit. Even though this one admission's interrogatory example had just one topic – identifying the basis – courts have counted it as having multiple subparts for each admission's request that it would address. *Safeco of Am. v. Rawstron*, 181 F.R.D. 441, 446 (C.D. Cal. 1998) ("an interrogatory that asks the responding party to state facts, identify witnesses, or identify documents supporting the denial of each request for admission contained in a set of requests for admissions usually should be construed as containing a subpart for each request for admission contained in the set. Therefore, each of defendant's requests for admissions as to which a response to the three interrogatories would be required if the request were not admitted should be treated as a separately countable subpart of each of the three interrogatories.").

Sincerely,

By: /s/ Norman E. Garcia
NORMAN E. GARCIA
Senior Trial Attorney

⁵ ROG 21 stated: "State all facts that support the allegation in Paragraph 12 and 13 of the Amended Complaint that YOU requested "various records" that Oracle "refused to produce," including a description of the specific records YOU requested, the date(s) on which YOU requested the records, the date(s) on which YOU contend that Oracle refused to produce those records, the PERSON that refused to produce the records, and the COMMUNICATION reflecting the refusal.